UNITED STATES
v.
RALPH F. FROGLEY
MELVIN S. EILERS

IBLA 80-595 Decided April 30, 1981

Appeal from a decision of Administrative Judge John R. Rampton, Jr., holding the 4th of July and Greg Eilers lode mining claims invalid. Contest No. I-8291.

Affirmed.

1. Mining Claims: Determination of Validity--Mining Claims: Discovery: Generally--Mining Claims: Patent

Where, in a contest on an application for a mineral patent, it is determined that no discovery has been made on a claim, the necessary result of this determination is that the mining claim is invalid and must be so declared.

APPEARANCES: Graydon W. Smith, Esq., for appellants; Earl R. Benson, Esq., Office of the General Counsel, U.S. Department of Agriculture, Ogden, Utah, for appellee.

OPINION BY ADMINISTRATIVE JUDGE BURSKI

Ralph F. Frogley and Melvin S. Eilers appeal from a decision rendered by Administrative Law Judge John R. Rampton, Jr., dated September 10, 1979, declaring the 4th of July and Greg Eilers lode mining claims invalid.

Appellant Melvin S. Eilers located the 4th of July lode mining claim on July 4, 1961, and the Greg Eilers lode mining claim on September 1, 1969. On July 18, 1973, Eilers transferred an interest in both claims to appellant Ralph F. Frogley. On April 18, 1974, appellants made application for patent of these two claims.

On June 5, 1978, the Bureau of Land Management (BLM), at the request of the Department of Agriculture, filed a contest complaint against these two claims alleging, inter alia, that no discovery of a valuable mineral deposit was disclosed within the limits of the claim. The appellants duly answered denying the allegations, and a hearing was subsequently held on August 23, 1979, before Administrative Law Judge John R. Rampton, Jr.

In his decision, dated March 18, 1980, Judge Rampton carefully reviewed the record, and, though noting that the claims might have potential, held that the showings thus far made established that the claims were "in the prospecting stage." Judge Rampton concluded "unless and until the contestees are able to establish by further exploration work, consisting of excavations and drillings, to expose economically valuable mineral, no discovery under the meaning of the mining laws has been made." Pursuant to this finding, he declared the two claims invalid.

On appeal, appellants do not contend that a discovery presently exists within the limits of the claims. 1/ Rather, they argue that Judge Rampton had no authority to declare the claims invalid; that he should only have rejected the patent application.

[1] Appellants are in error as to the authority of the Administrative Law Judge. Indeed, in United States v. Carlile, 67 I.D. 417 (1960), the Department explicitly held that where, in a contest against a mining claim, it is found that a discovery has not been made "it necessarily follows that the claim is invalid, or null and void, without regard to whether the contest was brought as the result of an application for patent or in the absence of an application for patent." Id. at 427. The premise of Carlile is based on the statutory requirement that discovery precede location. See 30 U.S.C. § 23 (1976); United States v. Gassaway, 43 IBLA 382, 384 (1979). Where, after notice and hearing, it is shown that no discovery exists, the conclusion must follow that the claim is invalid. See Sedgwick v. Callahan, 9 IBLA 216, 229-30 (1972).

Thus, not only was Judge Rampton authorized to declare the instant claims invalid once he had determined that no discovery existed, he was required to make this declaration.

Appellants also advert to a letter sent to them by the District Forest Ranger, dated March 11, 1980, concerning removal of their cabins. In this letter, the District Forest Ranger discussed plans for exploration work in 1980. Appellants argue that this letter contradicts the finding of invalidity. We must disagree. Absent a withdrawal or some other appropriation, the lands embraced by the claims would be open to

1/ Our review of the record shows that Judge Rampton's conclusions were clearly in accord with the evidence presented.

prospecting under the mining laws. Nothing in this letter, in any way, supports a finding that a discovery is presently disclosed within the limits of the claim. On the contrary, negotiations with an eye towards permitting "exploration" presupposes no present discovery. Thus, this letter is of no probative value insofar as the issue of the validity of the two claims is concerned.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

James L. Burski
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Douglas E. Henriques
Administrative Judge